



# *Info@starklawlibrary.org*

*Stark County Law Library Association*

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## **BEGINNERS**

## **Trial Lawyer Resource Center**

**The email address, [info@starklawlibrary.org](mailto:info@starklawlibrary.org) really works! TRY IT!!**

This month's entry is not exactly a website. It is a blog that you may have seen referenced on our website's blog <<http://temp.starklawlibrary.org/blog/>>. The Trial Lawyer Resource Center, located at <<http://www.tlrcblog.com/>> has so many contributors, thirteen so far, that the site has the potential to always offer something new and interesting to read.

In that group there are 5 past state TLA Presidents, 3 past Presidents of the Melvin Belli Society, 2 past Presidents of the Southern Trial Lawyers, the current President of Workers Injury Law & Advocacy Group, plus the incoming President of the Inner Circle of Advocates.<sup>1</sup>

Plans for the future include expanding this group to 25 with the addition of nationally-known lawyers.<sup>2</sup>

The variety of trial techniques discussed in the blog include: "Openings & Closings," "Presentation," "Questioning," "Case Workup," "Medical

Information," "Case Specific Ideas," "Settlement/Mediation," "Practice of Law," "Post-Settlement Issues," "Themes and Framing," "Guest Posts," "Forms," and more.<sup>3</sup>

In an interview with Evan Schaeffer, David Swanner, one of the founders of the new blog stated: "...all of the advice is coming from plaintiff's lawyers and will be geared towards plaintiff's lawyers. I'm sure defense attorneys can pick up a tip or two, but the site is designed to assist plaintiff's lawyers."<sup>4</sup> Speaking of the future of the site, Swanner added:

We're going to give it 2-3 months to settle in, then we're going to start a feature where the contributing attorneys will engage in a monthly roundtable discussion. We'll use a private listserv to discuss a topic in e-mails and then have the e-mails combined into a discussion thread and published at the end of the month.

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## BEGINNER Trial Lawyer Resource Center (Cont.)

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Over a period of time, we'll branch out into podcasts with interviews and potentially sample opening statements

and other arguments. After that we hope to branch out into videocasts.<sup>5</sup>



## INTERMEDIATE

## Voir Dire

Computerized voir dire is not new. First introduced in 2003, SmartJury, though no longer on the market, is getting a make-over in Florida and will be back on the market with a new version in the future.<sup>6</sup> The current product is JuryQuest, and although I am not promoting the product I do think that it is something you should know about because the opposing counsel may be using it. If you need another reason to keep reading, JuryQuest claims to be able to enhance the odds of a favorable outcome by over 25%!<sup>7</sup>

JuryQuest is a scientifically validated database of nearly 45,000 respondents to various verdict related surveys. Jury-

Quest uses this database to identify how verdict related attitudes and opinions are distributed among the population. JuryQuest uses scientific jury selection principals to profile the jurors in your panel according to their demographic match with the respondents in the database. JuryQuest uses the general individual juror descriptive data typically supplied by the court depending on jurisdiction.

- JuryQuest assigns each juror a verdict related profile score and ranks them according to their potential bias in your case (from “Ideal” to “Dangerous” juror).

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**INTERMEDIATE****Voir Dire (Cont.)**

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- Low rated jurors are targeted for voir dire, leading to removal for cause.
- The probability of a favorable jury composition is assured by the exercise of peremptory strikes against surviving low-rated (“Dangerous”) jurors.<sup>8</sup>

Professional judgment can be improved by combining and integrating analytic and intuitive decision making. JuryQuest sees itself as a tool to help guide lawyers through the rough spots, when they are down to the last few jurors and don’t have time to

question them all.<sup>9</sup>

There are a couple of problems with using computer-assisted voir dire. The first is the age-old problem of GIGO, or Garbage In, Garbage Out, for you nontechnies. A few errant keystrokes and your jury rankings are bogus. Also because the software’s scores for individual jurors are based on demographic and social grouping,<sup>10</sup> the computer’s rankings system causes some concern under *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court’s decision that race cannot be used as grounds for striking a juror.<sup>11</sup>

**ADVANCED****E-Discovery**

Any discussion of metadata eventually leads to the topic of e-discovery. “Metadata is both evidence and a key to validating and understanding other evidence. Either way, it’s discoverable when potentially relevant.”<sup>12</sup>

Proper evidence handling entails a sound chain-of-custody, even in civil matters. Metadata functions as the tag attached to evidence in a police property room. The preservation of a file’s external system meta-

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**ADVANCED****E-Discovery (Cont.)**

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The new rules in a nutshell are:

- ESI is discoverable
- Clients must preserve and produce ESI
- Lawyers must understand how to request, protect, review and produce ESI
- The courts have the tools to rectify abusive or obstructive electronic discovery.<sup>16</sup>

data, in particular its name, system origins and dates of creation, last access and modification, is as fundamental to meeting chain-of-custody obligations as Bates numbering or the elements of the business records exception, perhaps more important because metadata is so fluid. Fail to preserve metadata at the earliest opportunity and you may never be able to replicate what was lost.<sup>13</sup>

The evidentiary value of metadata will only increase as electronic communications improves making metadata even more vital in discovery. “Already, some 95% of all information is born electronically, the data bound to and defined by its metadata as we are by our DNA.”<sup>14</sup>

The new amendments to the Federal Rules of Civil Procedure

recognizing how quickly the realm of electronic communication is changing have coined the acronym ESI (Electronically Stored Information) which includes “any potentially relevant data that’s stored on computers, disks, tape, gadgets and the internet”<sup>15</sup> and the metadata of such information.

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- Clients must preserve and produce ESI
- Lawyers must understand how to request, protect, review and produce ESI
- The courts have the tools to rectify abusive or obstructive electronic discovery.<sup>16</sup>

Look for more information on e-discovery next month.

## FOOTNOTES

- <sup>1</sup> Swanner, David. "New Group Trial Lawyer Blog - Trial Lawyer Resource Center." South Carolina Trial Law Blog 3 October 2006. lexBlog, Inc. 6 October 2006. <<http://www.sctrialaw.com/websitesweblogs-new-group-trial-lawyer-blog-trial-lawyer-resource-center.html>>.
- <sup>2, 4 & 5</sup> Schaeffer, Evan. "The Trial Lawyer Resource Center: An Interview with David Swanner, One of the Founders..." Evan Schaeffer's Legal Underground. 2 October 2006. Creative Commons. 6 October 2006. <[http://www.legalunderground.com/2006/10/questions\\_and\\_a.html](http://www.legalunderground.com/2006/10/questions_and_a.html)>.
- <sup>3</sup> Trial Lawyer Resource Center. Forge Consulting. 6 October 2006. <<http://www.tlrcblog.com/>>.
- <sup>6, 9 & 11</sup> Baldas, Tresa. "Computerized Voir Dire." Legal Technology. 6 September 2006. Law.com. 16 October 2006. <<http://www.law.com/jsp/legaltechnology/PubArticleFriendlyLT.jsp?id=1157462045526&rss=ltn>>.
- <sup>7 & 8</sup> "JuryQuest: Identify the Dangerous Juror" JuryQuest. 16 October 2006. Jury Quest LLC. 16 October 2006. <[http://www.juryquest.com/index.php?option=com\\_content&task=view&id=58&Itemid=84](http://www.juryquest.com/index.php?option=com_content&task=view&id=58&Itemid=84)>.
- <sup>10</sup> "Scientific Jury Selection." JuryQuest. 15 October 2006. JuryQuest LLC. 19 October 2006. <[http://www.juryquest.com/index.php?option=com\\_content&task=view&id=59&Itemid=85](http://www.juryquest.com/index.php?option=com_content&task=view&id=59&Itemid=85)>.
- <sup>12</sup> Ball, Craig. "Making Friends with Metadata." Law.com Legal Technology. 26 January 2006. ALM Properties, Inc. 19 October 2006. <<http://www.law.com/jsp/legaltechnology/pubArticleLTN.jsp?id=1138183510640>>.
- <sup>13 & 14</sup> Ball, Craig. "Beyond Data About Data: The Litigator's Guide to Metadata." 2005. 20 October 2006. Available at <<http://www.craigball.com/articles.html>>.
- <sup>15 & 16</sup> Ball, Craig. "Hitting the High Points of the New e-Discovery Rules." Law Practice Today. October 2006. American Bar Association. 23 October 2006. <<http://www.abanet.org/lpm/lpt/articles/tch10061.shtml>>.

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